



**Kang'ethe & 5 others v Ng'ng'a; Kang'ethe & 11 others (Proposed Objectors)  
(Civil Application E043 of 2024) [2024] KECA 630 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KECA 630 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E043 OF 2024  
MA WARSAME, JA  
MAY 28, 2024**

**BETWEEN**

**JULIUS WAIHINYA KANG'ETHE ..... 1<sup>ST</sup> PROPOSED APPELLANT  
KULIANA WARIGI KANG'ETHE ..... 2<sup>ND</sup> PROPOSED APPELLANT  
CATHERINE GATHONI KOGI ..... 3<sup>RD</sup> PROPOSED APPELLANT  
MONICAH WAMBUI KANG'ETHE ..... 4<sup>TH</sup> PROPOSED APPELLANT  
NG'ANG'A KANG'ETHE ..... 5<sup>TH</sup> PROPOSED APPELLANT  
KINYANJUI KANG'ETHE ..... 6<sup>TH</sup> PROPOSED APPELLANT**

**AND**

**MUHIA MUCHIRI NG'NG'A ..... PROPOSED RESPONDENT**

**AND**

**WAHINYA KANG'ETHE & 11 OTHERS ..... PROPOSED OBJECTOR**

*(An Application to file an Appeal out of time from the Ruling of the High Court of Kenya at Nakuru (Ombwayo, J.) dated 11th December, 2023 in Nkr ELC NO. 253 of 2012)*

**RULING**

1. The Notice of Motion dated 20<sup>th</sup> March, 2024 seeks two main prayers:
  - i. That the proposed appellants be granted leave to appeal out of time against the Ruling delivered on 11<sup>th</sup> December, 2023.
  - ii. That this Court do admit the draft Memorandum of Appeal out of time and the same be deemed as duly filed upon payment of requisite court fees.



2. The process of Appeal is underpinned by statutes, Rules and Procedures. A party is bound to play within the set out procedures, rules and practices. It is important to appreciate that a party cannot be allowed to set his own rules and practice and expect to benefit from the same. The first step is the process of undertaking an Appeal is to file a Notice of Appeal within the stipulated period and if not possible to seek leave to file the same out of time.
3. In my view, what the applicant is trying to do is to put the cart before the horse. The applicant's application is seeking to be allowed to file an appeal out of time, when he did not file a Notice of Appeal or sought an extension within which to file the same out of time. Such a process is an absurdity not known under our Rules, Procedures and Practices. It is an attempt to overturn the set out Rules and Procedures.
4. The application is therefore incompetent and an outright abuse of the court process. It is dismissed with costs to the Respondent. It is so ordered.

**DATED AND DELIVERED AT NAKURU THIS 28TH DAY OF MAY, 2024.**

**M. WARSAME**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original.

Signed

**DEPUTY REGISTRAR**

